

Honolulu, Hawaii

FEB 06 2014

RE: S.B. No. 2261
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 2261 entitled:

"A BILL FOR AN ACT RELATING TO WAGES AND HOURS ON PUBLIC
WORKS, "

begs leave to report as follows:

The purpose and intent of this measure is to assist the
Department of Labor and Industrial Relations in its enforcement of
the laws relating to wages and hours on public works.
Specifically, this measure:

- (1) Prohibits private agreements from contravening or
setting aside any requirement under chapter 104, Hawaii
Revised Statutes;
- (2) Adds a definition of "contractor";
- (3) Authorizes government contracting agencies to withhold
further payments from a contractor if a subcontractor or
agent of the contractor or subcontractor interferes with
or delays an investigation conducted by the Department
of Labor and Industrial Relations;
- (4) Increases the prevailing wage penalty from \$1,000 per
project and \$100 per day to \$10,000 per project and
\$1,000 per day, respectively;



- (5) Clarifies that general contractors are secondarily liable for payment of back wages and penalties imposed on any of their subcontractors; and
- (6) Requires notifications of violations to be final and conclusive unless within twenty days after a copy is sent to the contractor, the contractor files a written notice of appeal.

Your Committee received testimony in support of this measure from the Department of Labor and Industrial Relations; Department of Accounting and General Services; Hawaii State AFL-CIO, International Brotherhood of Electrical Workers, Local Union 1186; and one individual. Testimony in opposition to this measure was submitted by the Associated Builders and Contractors, Inc., Hawaii Chapter; Building Industry Association-Hawaii; and General Contractors Association of Hawaii.

Your Committee finds that this measure assists the Department of Labor and Industrial Relations in its enforcement of the laws relating to wages and hours on public works and encourages contractors to comply with these laws. The Department of Labor and Industrial Relations testified that compliance creates a level playing field for contractors to bid on state and county projects and that better enforcement mechanisms protect workers' rights and benefits.

First, the Department of Labor and Industrial Relations testified that contractors often contend that their employees agreed under a private agreement to be paid wages lower than the wage rate required by law. This measure prohibits such private agreements from contravening or setting aside any requirement under chapter 104, Hawaii Revised Statutes. Second, this measure adds a definition of "contractor" to chapter 104, Hawaii Revised Statutes, to clarify that a contractor includes a general contractor or subcontractor. Third, this measure increases the penalty amounts for violations per day and per project to compel compliance. The Department testified that the existing penalty amounts do not reflect the importance of compliance, especially when many of the projects investigated are large projects in the multi-million dollar range. Fourth, this measure clarifies that general contractors are secondarily liable for payment of back wages and penalties imposed on any of their subcontractors to ensure that their subcontractors are also in compliance with the requirements of the law. Fifth, this measure requires



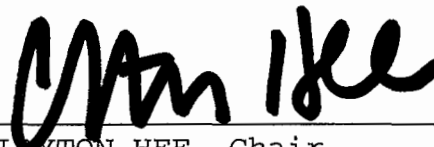
notifications of violations to be final and conclusive unless within twenty days after a copy is sent to the contractor, the contractor files a written notice of appeal. The Department testified that requiring notifications will allow the Department to avoid having to re-open cases when contractors assert their right to appeal because they contend that they did not receive a notification.

Your Committee has amended this measure by adopting the amendments suggested by the Department of Labor and Industrial Relations to:

- (1) Amend the definition of "contractor" and make a conforming amendment to be consistent with this amended definition; and
- (2) Amend the language that makes a general contractor secondarily liable for its subcontractor to avoid conflicts with prompt payment requirements that may pose problems for the Department to obtain withheld funds.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2261, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2261, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



The Senate
Twenty-Seventh Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* <div style="font-size: 1.2em; font-family: cursive;">SB 2261</div>	Committee Referral: <div style="font-size: 1.2em; font-family: cursive;">JDL, WAM</div>	Date: <div style="font-size: 1.2em; font-family: cursive;">01-30-14</div>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="text-align: center;"><input type="checkbox"/> Pass, unamended <small>2312</small></div> <div style="text-align: center;"><input checked="" type="checkbox"/> Pass, with amendments <small>2311</small></div> <div style="text-align: center;"><input type="checkbox"/> Hold <small>2310</small></div> <div style="text-align: center;"><input type="checkbox"/> Recommit <small>2313</small></div> </div>				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile S.L. (VC)	✓			
GABBARD, Mike	✓			
GALUTERIA, Brickwood	✓			
IHARA, Jr., Les				✓
SOLOMON, Malama	✓			
SLOM, Sam			✓	
TOTAL	5	0	1	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <div style="font-family: cursive; font-size: 1.5em;">[Signature]</div>				
Distribution: <div style="display: flex; justify-content: space-between; font-size: 0.8em;"> <div>Original File with Committee Report</div> <div>Yellow Clerk's Office</div> <div>Pink Drafting Agency</div> <div>Goldenrod Committee File Copy</div> </div>				

*Only one measure per Record of Votes